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A PRACTICAL VIEW OF THE WTO DISPUTE SETTLEMENT MECHANISM THROUGH VARIOUS CASES

**Session 2 – Case Study: DS415-418
Dominican Republic – Safeguards Measures**

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BACKGROUND

A few important facts

- One of the first safeguard investigations ever initiated by the Dominican Republic (DR)
- The first ever safeguard measure imposed by the DR under Article XIX GATT
- Trade volume relatively low
- Countries participating in the investigation:
Mainly Central and South American



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BACKGROUND – THE PRODUCTS




Polypropylene (PP) bags (6305)



PP tubular fabric (5407)
Input for making PP bags



BACKGROUND – MAIN DATES

Initiation of the investigation	15 Dec. 2009	 <p>Measures in place for approx. 2 years</p>
Preliminary measures imposed	16 March 2010	
Definitive measures imposed	5 Oct. 2010	
Request for consultations	15 Oct. 2010	
Request for establishment	15 Dec. 2010	
Panel established by DSB	7 Feb. 2011	
Request for DG composition	1 March 2011	
Composition of the panel (DG)	11 March 2011	
Final report circulated	31 Jan. 2012	
Adoption of the report	22 Feb. 2012	
Repeal of the measure	21 Apr. 2012	



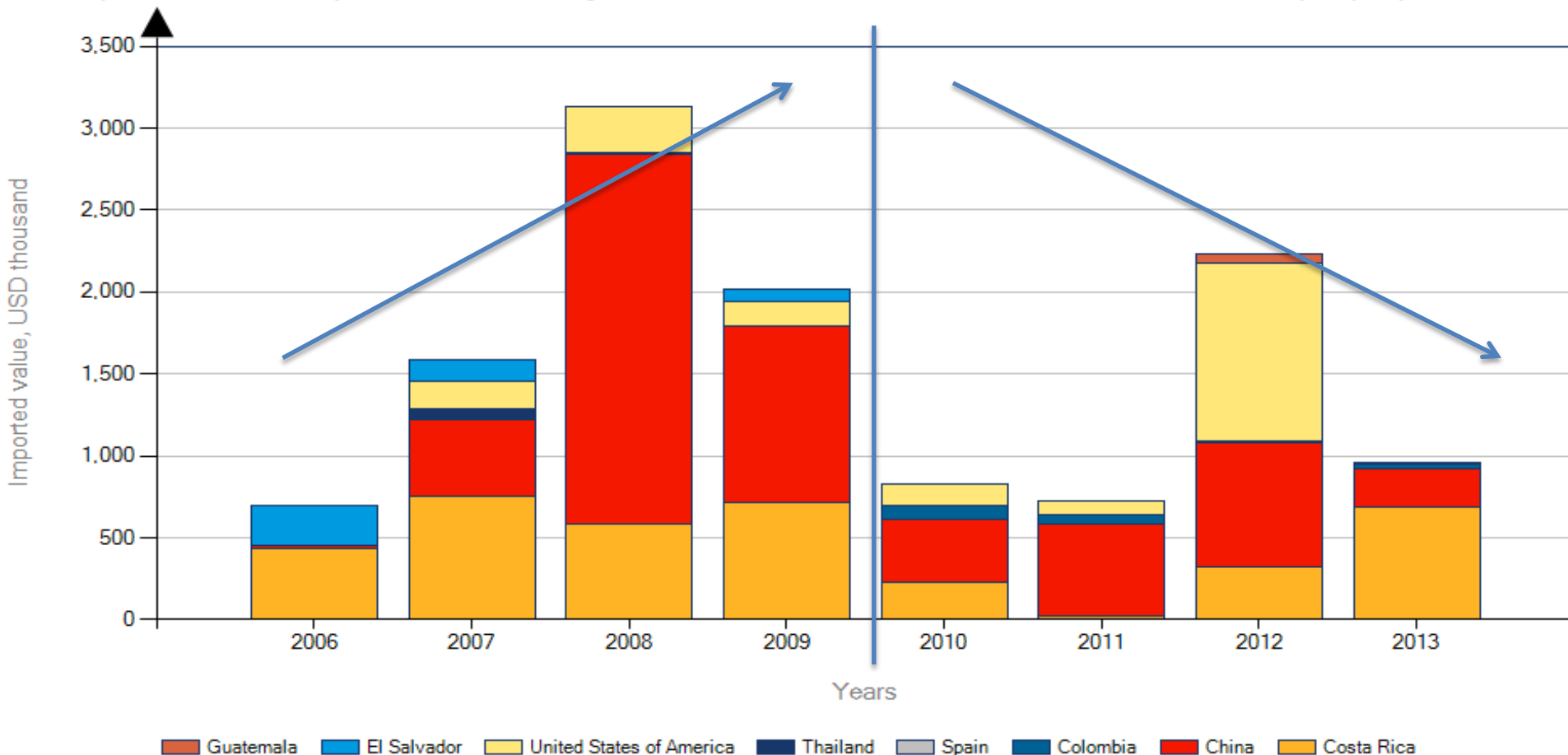
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BACKGROUND - STATS

List of supplying markets for a product imported by Dominican Republic

Product: 54072020 Tejidos de hilados de filamentos sintéticos, incluidos los tejidos fabricados con los productos de la partida 54.04: Tejidos fabricados con tiras o formas similares: De polipropileno





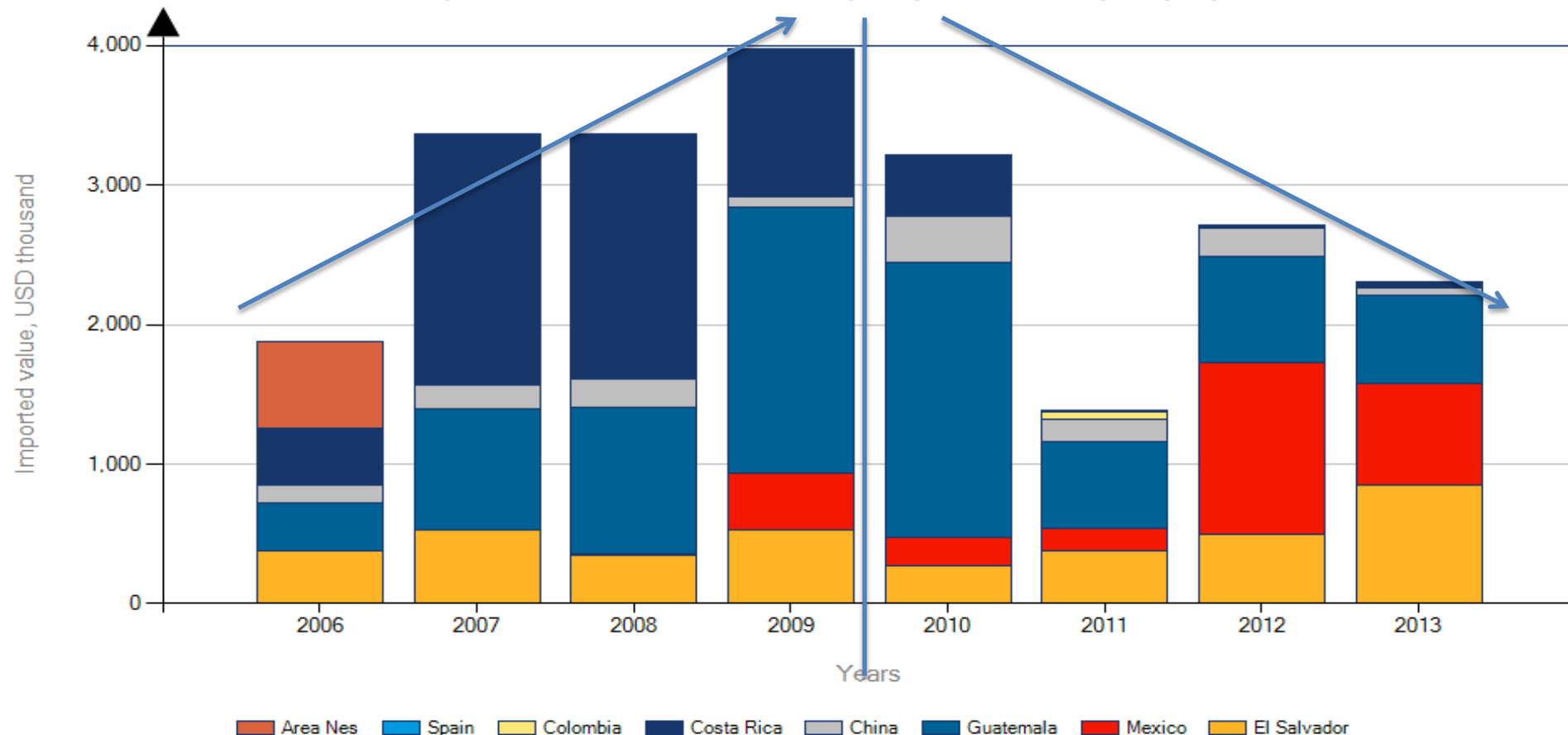
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BACKGROUND - STATS

List of supplying markets for a product imported by Dominican Republic

Product: 63053390 Sacos (bolsas) y talegas, para envasar: De materias textiles sintéticas o artificiales: Los demás, de tiras o formas similares, de polietileno o prolipropileno: Los demás





CONSULTATIONS

- Specific content is confidential
 - ✓ Complainants formulated an extensive list of questions concerning the investigation and determinations
 - ✓ Requested the termination of the measure arguing that they were WTO-inconsistent
- One round of meetings took place in the DR in mid-November
- The DR did not agree to terminate the measures
- Panel requests were submitted during the second half of December



ESTABLISHMENT AND COMPOSITION OF THE PANEL

- 25 Jan. 2011: DR blocked the establishment of the panel
- 7 Feb. 2011: Single panel established at the 2nd request
- Composition: Various meetings took place with the Secretariat and names proposed / rejected
- 1 March 2011: In view of deadlock, co-complainants requested the DG to compose
- Meeting with the DG; 11 March 2011, he composed ex-officio
- (“Small” case but) 7 third parties; other than the co-complainants requested third party rights; enhanced third party rights to Colombia rejected



DEVELOPMENT OF THE CASE

- 25 March 2011: After meetings with parties, the TT and WP adopted; panel work in Spanish
- 1 April: Submission FWS - Complainants
- 5 April: BCI protection measures
- 20 April: Request for a preliminary ruling (PR) – DR requested to suspend the proceedings until the PR is issued
- 3 May: Submission FWS - DR
- 12 May: Panel rejects the suspension and will decide on the substantive matter in the report itself
- 15-16 June: First Oral Hearing in Geneva
- 30 June: First round of questions



DEVELOPMENT OF THE CASE

- 7 July: Second written submission (both parties at the same time)
- 26-27 July: Second Oral Hearing in Geneva
- 8 August: Second round of questions
- 15 August: Comments on the replies
- 19 August: Descriptive part sent to parties
- 19 October: Interim report sent to parties
- Parties submitted comments
- 23 November: Final report sent to parties
- January 2012: Panel report published in the WTO website



SAFEGUARDS AGREEMENT

Extraordinary and temporary import relief measure to protect a domestic industry which can be imposed regardless of the existence of any unfair trading practice

Article XIX of GATT 1994

- A determination that,
- As a result of (i) **unforeseen developments** and (ii) the effect of a **Member's obligations** under GATT 1994
- A product is being imported in **such increased** quantities
- As to **cause or threaten** to cause
- **Serious** injury
- To the **domestic industry**
- Producing **like or directly competitive products**



SELECTED MATTERS & FINDINGS

Unforeseen developments (UD)

Complainants: The DR did not comply with the requirement to determine the existence of UD

DR: There is not such obligation in the Safeguards Agreement. In any event, the DR examined it in the investigation

Previous panels/AB: The AB has consistently held that the Safeguards Agreement must be read jointly with Article XIX of GATT 1994 and that this provision contains certain requirements that must be observed by investigating authorities in safeguard investigation (e.g. UD / “as a result of obligations”)

Panel findings:

- 1) It fully agreed with the earlier AB findings on this matter
- 2) The public report does not contain any reference, or offer any finding or explanation concerning the UD
- 3) Lack of own findings in the public reports
- 4) [Similar conclusions with respect to the assessment of the “effects of obligations incurred under the GATT 1994”]



SELECTED MATTERS & FINDINGS

Domestic industry

Complainants: The definition of the domestic industry failed to include several producers of the like product

DR: Only one company was considered to produce the like product

Previous panels/AB:

- 1) No disciplines regarding the determination of the product under investigation
- 2) AB has defined the term “domestic producer”. Panel agreed

Panel findings:

- 1) There are no disciplines applicable to the determination of the product under investigation
- 2) The domestic industry cannot be defined as a portion of the producers of the like product
- 3) Relevance of production process in the determination of the like product – “low level of activity”
- 4) Injury/causality determinations are automatically inconsistent – Judicial economy?



SELECTED MATTERS & FINDINGS

Increase of imports

Complainants: Overall decrease in absolute terms

DR: The decrease in absolute terms is explained by the general fall of imports

Previous panels/AB:

The panel sided with previous AB interpretations

Panel findings:

- 1) The overall performance of imports is a factor that can explain a fall in imports of the investigated product
- 2) Performance of imports after the end of the period of investigation may be considered
- 3) The increase of imports of bags and tubular fabric may be examined together



SELECTED MATTERS & FINDINGS

Injury

Complainants: Several factors improperly examined; no significant overall impairment of the industry

DR: All factors examined; the domestic industry suffered serious injury

Previous panels/AB: Formal (have all factors been examined?) and substantive (has the investigating authority provided a reasoned and adequate explanation?)

Panel findings:

- 1) The facts contradicted some determinations made by the investigating authority / there is insufficient and inadequate reasoning for some determinations
- 2) The complainants failed to make the case in other instances
- 3) The panel rejected the overall conclusion that the domestic industry was suffering serious injury (4 factors pointed towards injury; 7 against)



SELECTED MATTERS & FINDINGS

Parallelism

Complainants: Violation of the parallelism principle; failed to exclude certain developing countries from the scope of the measure

DR: Findings relating to the principle of parallelism do not apply; Thailand was *in fact* excluded from the measure

Previous panels/AB: The panel cited, and agreed, with previous AB determinations regarding parallelism

Panel findings:

- 1) Art. 9.1 obliges to exclude from the scope of application of safeguard measures imports from developing countries, even if they have been considered in the course of the investigation
- 2) The DR violated the Safeguards Agreement by not excluding certain developing country members from the scope of the measure
- 3) The DR did not take all reasonable measures to exclude Thailand